



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

ODOURI L. LYLES,

Petitioner,

vs.

LARRY CARTLEDGE, Warden,

Respondent.

§
§
§
§
§
§
§
§
§
§

Civil Action No. 9:16-02789-MGL-BM

ORDER ADOPTING THE REPORT AND RECOMMENDATION,
GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT,
AND DISMISSING THE PETITION WITH PREJUDICE

This action arises under 28 U.S.C. § 2254. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Respondent's Motion for Summary Judgment be granted and the Petition be dismissed with prejudice. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 8, 2017. ECF No. 40. On February 9, 2017, the Clerk of Court filed Petitioner's Motion to Reinstate Based on Excusable Neglect (Motion to Reinstate). ECF No. 42.

"A document filed *pro se* is 'to be liberally construed.'" *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Courts are not, however, required to "conjure up questions never squarely presented to them" or seek out arguments for a party. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

In Petitioner's Motion to Reinstate, he requests the Court "excuse the default (i.e. lack of prosecution), for reasons outside of his control and knowledge." *Id.* at 1. Petitioner's Motion to Reinstate appears to relate to the Magistrate Judge's January 11, 2017, Report and Recommendation, ECF No. 30, recommending the Petition be dismissed for lack of prosecution as a result of Petitioner's failure to respond to Respondent's Motion for Summary Judgment. The Court, however, entered a text order on January 17, 2017, vacating the January 11, 2017, Report and Recommendation after the Clerk of Court filed Petitioner's response to Respondent's Motion for Summary Judgment, ECF No. 33, and remanding the matter to the Magistrate Judge for further proceedings. ECF No. 34. The February 8, 2017, Report at issue here recommends dismissal based on the merits, not failure to prosecute. Petitioner's Motion to Reinstate is therefore moot.

Even when construed liberally and in the light most favorable to Petitioner, Petitioner's Motion to Reinstate fails to set forth any specific objections to the Report. Any meaningful counter to the well-reasoned conclusions in the Report is absent. "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the

recommendation.”” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court Respondent’s motion for summary judgment is **GRANTED**, and the Petition is **DISMISSED WITH PREJUDICE**.

To the extent Petitioner requests a certificate of appealability from this Court, that certificate is **DENIED**.

IT IS SO ORDERED.

Signed this 28th day of February 2017 in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.